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March 27, 2015

VIA FACSIMILE

Mr. John C. McMillan
Deputy Division Chief
California Department of Transportation
Division of Engineering Services
1727 30th Street
Sacramento, CA 95819-8041

Re: Liberty Maintenance, Inc./Caltrans - Contract No. 03-3F3404

This firm represents Liberty Maintenance, Inc., with respect to its bid for Caltrans Contract No. 03-3F3404. The purpose of this letter is to protest apparent low bidder American Civil Constructors West Coast, Inc.'s ("ACC West") bid. For the reasons stated below, ACC West's bid should be found non-responsive and the contract awarded to the lowest responsible bidder Liberty Maintenance, Inc.

1. ACC West's bid does not establish that 30% of the work will be performed by its own forces

Special Provision Section 5, Control of the Work, paragraph 5-1.13A requires the contractor to perform at least 30% of the work with its own employees and with equipment it owns or rents. Wisely, Caltrans chose to phrase this requirement in terms of actual performance and not as a numerical limit to the portion of the work a prime contractor may subcontract. The purpose of such a requirement is to ensure that the general contractor is sufficiently involved with the work so that it is able to control and guarantee both the progress of the work and the quality of the finished project. In other words, Section 5's provisions are meant to exclude "paper contractors," those that assign all work to subcontractors and simply administer the contract.

ACC West's bid clearly shows that nearly all of the "work" that will be performed under the contract will be performed not by ACC West, but its subcontractors. The "work" that ACC West will perform, as indicated in its bid documents, is mobilization and overhead, which together comprise roughly 20% of its bid.

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For purposes of interpreting and applying Section 5-1.13A's control requirement, time-related overhead and mobilization should not be considered part of the work. Time-related overhead is intended to encompass field and home-office overhead expenses, which typically relate to the costs incurred to administer the contract, not to perform the work itself (See Special Provision 9-1.11A). Similarly, mobilization costs refer to preparatory actions that must be undertaken or costs incurred before starting actual work on the project (See Pub. Cont. Code § 10104). Time-related overhead and mobilization are only tenuously connected to the work of the project, and are not in actuality part of the work itself.

By heavily weighting and self-performing the time-related overhead and mobilization bid items, ACC West has effectively submitted a bid wherein the actual "work" of the contract will be performed exclusively by its subcontractors while ACC West will only be responsible for contract administration, overhead, and profit.

For example, the work in Bid Item 22, Clean and Paint Structural Steel, includes preliminary scaffolding/access work and performance of the actual cleaning and painting of structural steel. In gross terms, this item accounts for over 71% of ACC West's bid. According to its bid documents, ACC West has subcontracted 56.89% of Bid Item 22 to its cleaning and painting subcontractor Murphy Industrial Coatings, and 19.95% to its scaffolding and access subcontractor Peterson Industrial Scaffolding. From the face of the bid, it is clear that there is no work left within Bid Item 22 for ACC West to self-perform and that the balance retained by ACC West is its overhead and profit.

Moreover, the cleaning and painting of structural steel on this project requires SSPC QP 1 and 2 Certifications (see Special Provision Sections 2-1.35 and 59-2.01, and Caltrans' Advance Notice to Contractors/Subcontractors regarding SSSPC QP requirements at: http://www.dot.ca.gov/hq/esc/construction/contractor_notice.htm.) Unlike Liberty Maintenance and the other bidders on this project, ACC West does not possess the required SSPC QP certifications, and is therefore unable to self-perform cleaning and painting work within Bid Item 22. In short, it is clear that at least 71% of the contract work must be performed by ACC West's subcontractors, and that ACC West will not meet the control requirement.

An analysis of ACC West's bid, and consideration of the "work" that is called for under the contract, compels the conclusion that ACC West will not self-perform at least 30% of the work and will relinquish the performance and control of the work Special Provision Section 5-1.13A requires. Because it is clear that ACC West will fail to fulfill the control and performance requirements of the contract, its bid should be considered non-responsive.

2. ACC West failed to submit all required DBE information

Sections 2-1.12B(2) and 2-1.33 of the Project Special Provisions require bidders to submit DBE Commitment and/or DBE Good Faith Efforts documentation no later than the 4th

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day after bid opening. Failure to submit the required forms and information is grounds to find a bid non-responsive. (See Project Special Provision Section 2-1.33, at page 12 for Contract 03-3F3404.)

The DBE Commitment form plainly states that bidders are required to "show all DBE firms being claimed for credit, regardless of tier" and to "attach written confirmation from each DBE shown stating that it will be participating in the contract to perform the specific work shown for the specific amount agreed to."

ACC West submitted the DBE Commitment form, but has failed to provide written confirmations from the five subcontractors for whom it seeks credit. Further, ACC did not submit any good faith efforts documentation. As a result, ACC West's bid fails to establish that it met the 4% DBE participation goal or undertook good faith efforts, and should therefore be found to be non-responsive.

In sum, Liberty Maintenance encourages you to reject ACC West's non-responsive bid, and is available to answer any further questions you might have about this protest. I am also available at the telephone number above should you have any questions about this letter. Thank you in advance for your prompt attention to this matter.

Sincerely,



Kevin Hannigan
for FELDMAN & ASSOCIATES, INC.

cc: Mark Feldman
Client

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FACSIMILE TRANSMITTAL

Time: 1:18 P.M.

File No: _____

File Name: Liberty Maintenance/Caltrans

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Mr. John McMillan	916-227-6282
Liberty Maintenance	330-755-1847

From: Kevin M. Hannifan

Total Pages (Including this Cover Page): 4

DESCRIPTION OF DOCUMENT(S) TRANSMITTED:

Protest Letter re: Caltrans Contract No. 03-3F3404

MESSAGE:

ORIGINAL WILL BE SENT VIA:

MAIL FEDERAL EXPRESS MESSENGER WILL NOT BE SENT

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